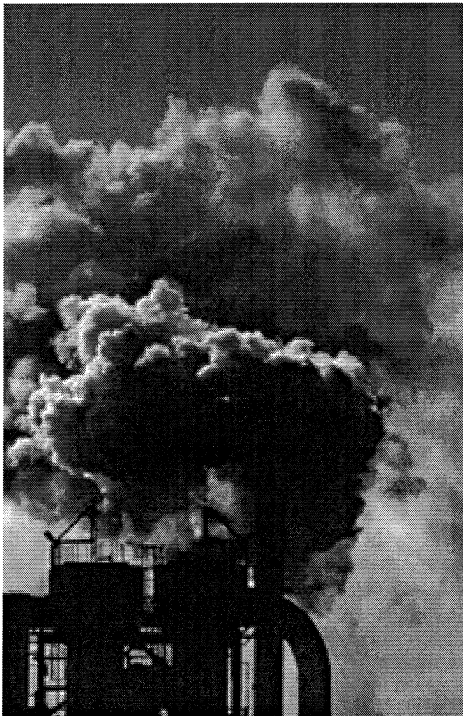




# **Does Honesty Pay at the Bush EPA?**



**A report comparing the environmental  
enforcement record of  
the Bush Administration  
to the Clinton Administration**

**Based on  
Environmental Protection Agency Data  
Provided to Rep. Edward J. Markey (D-MA)  
October 1, 2002**

# Introduction

Businesses that fully comply with federal environmental laws are harmed when those who fail to comply are not subject to enforcement action. If the laws are not enforced, dishonest competitors can put honest businesses out of business simply by continuing to pollute while avoiding the expenses associated with preventing pollution that are incurred by honest competitors. Therefore, every honest businessman has a critical stake in the government holding companies accountable when they cut corners by polluting. If honesty is to pay, honest businesses must depend on vigorous enforcement of our environmental laws.

A recent report by AIR Daily found that the number of inspectors and officials charged with enforcing U.S. air quality laws at the United States Environmental Protection Agency (EPA) fell by more than 12% in the past year alone<sup>1</sup>. This report analyzes current levels of enforcement at the EPA (as compared to levels of enforcement during the Clinton Administration) for all of the environmental statutes it is charged with enforcing in order to judge whether EPA is fulfilling its obligation to law-abiders by bringing actions against alleged law-breakers.

## Methodology

On March 4, 2002, Rep. Edward J. Markey sent a letter to Christine Todd Whitman, Administrator, EPA, requesting a list of all EPA enforcement actions initiated or completed since January 1, 1998. For each action, Rep. Markey also requested the date the action was initiated, the date it was completed (where applicable), the name of the facility against which the action was taken, the proposed penalty/costs associated with the enforcement action, and the final costs of the settlement, where applicable.

EPA responded to Rep. Markey's request in late April, and provided a CD-ROM containing records for more than 20,000 enforcement Administrative and Judicial Actions taken by the EPA in response to violations of environmental laws and regulations including the Clean Water Act, the Clean Air Act, Superfund, the Emergency Planning and Community Right to Know Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act and the Toxic Substances Control Act. The database included Actions initiated or settled between January 1, 1998 and March 7, 2002, and often listed a proposed financial penalty for the violation in question. Once the Actions were settled, there were often final financial penalties collected from the companies, but companies often avoided paying as high a penalty by doing something (Supplemental Environmental Project, physical corrective action, non-physical corrective

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<sup>1</sup> PR Newswire Copyright (c) 2002, PR Newswire Monday, September 9, 2002 EPA Air Quality Enforcement Sinks to Lowest Level on Record, AIR Daily Probe Finds WASHINGTON, Sept. 9 /PRNewswire/ -- The following was released today by Energy Argus Inc.: The number of staffers assigned to enforce air quality legislation under the Bush administration has fallen to the lowest level on record, an investigation by AIR Daily has found. The number of inspectors and officials charged with enforcing U.S. air quality laws fell by more than 12% in the past year alone. The information, obtained under a Freedom of Information Act request, shows that the number of employees dedicated full time to inspecting polluting facilities dropped from 528 to 464 between FY2001 and FY2002. The current level of staffing assigned to inspection and enforcement activities in the EPA's Office of Enforcement of Compliance Assurance (OECA) is now the lowest since the government began keeping records in FY1996. In FY1996, the EPA's operating plan called for 479 full-time enforcement employees. Because of changes in how the EPA tracks the number of inspections it performs, it is impossible to determine how this drop in staffing levels has affected enforcement activities by the agency. However, between FY1999 and FY2001, the number of air quality inspections by state environmental agencies fell from 34,861 to 23,014, a decline of 34%. Federal inspections are believed to have declined in the past three years as well. The number of EPA civil enforcement employees also has been cut in the past year by 5.7%. Current and former EPA officials told AIR Daily that the reductions undermine the EPA's ability to detect and punish environmental violations. The EPA refused to comment on the story.

action) that brought them into compliance with whatever regulation or law they had violated in the first place. In many cases, the cost of taking these Actions resulted in a reduction of the financial penalty, but was higher than the proposed penalty.

Over the next several months, Rep. Markey's staff analyzed the data in order to arrive at meaningful and accurate comparisons between environmental enforcement activities undertaken during the Clinton Administration and those undertaken by the Bush Administration. This report includes the staff analysis of Administrative Actions. Judicial Actions, which are an equally important measure of enforcement activity, are not as numerous as Administrative Actions and tend to take longer to conclude. Consequently, a comparison of environmental Judicial Actions initiated and settled by the Bush Administration with those initiated and settled by the Clinton Administration will be performed and released once more time has elapsed and more data is available.

## Findings

The results of the analysis indicate that there has been a dramatic decline in Administrative Actions taken by the new Administration to enforce and maintain compliance with the nation's environmental laws. Specifically:

- The Bush Administration initiated 40-50% fewer EPA Administrative Actions against polluting companies as the Clinton Administration did in both timeframes examined.

### **Timeframe 1: 12/4/99-1/19/01 (Clinton) compared to 1/20/01 – 3/7/02 (Bush)**

- The total cost of penalties and remedies recovered from environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration dropped by more than 80% as compared to that recovered by the Clinton Administration (\$165,066,975 vs \$845,142,719).
- The average settlement cost of environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration dropped by 62.9% as compared to that negotiated by the Clinton Administration (\$86,558.45 vs \$233,593.90).
- The ratio of the final settlement cost to the proposed penalty of environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration was 1.72, compared to 7.13 for the Clinton Administration.

### **Timeframe 2: 04/20/00-07/20/00 (Clinton) compared to 04/20/01-07/20/01 (Bush)**

- The total cost of penalties and remedies recovered from environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration dropped by more than 80% as compared to that recovered by the Clinton Administration (\$52,583,122 vs \$288,935,051).
- The average settlement cost of environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration dropped by 62.1% as compared to that negotiated by the Clinton Administration (\$85,501.01 vs \$225,907.00).
- The ratio of the final settlement cost to the proposed penalty of environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration was 3.15, compared to 5.81 for the Clinton Administration.

## Discussion of Findings

### A) Environmental Enforcement Actions Against Polluting Companies Have Declined Markedly Under the Bush Administration

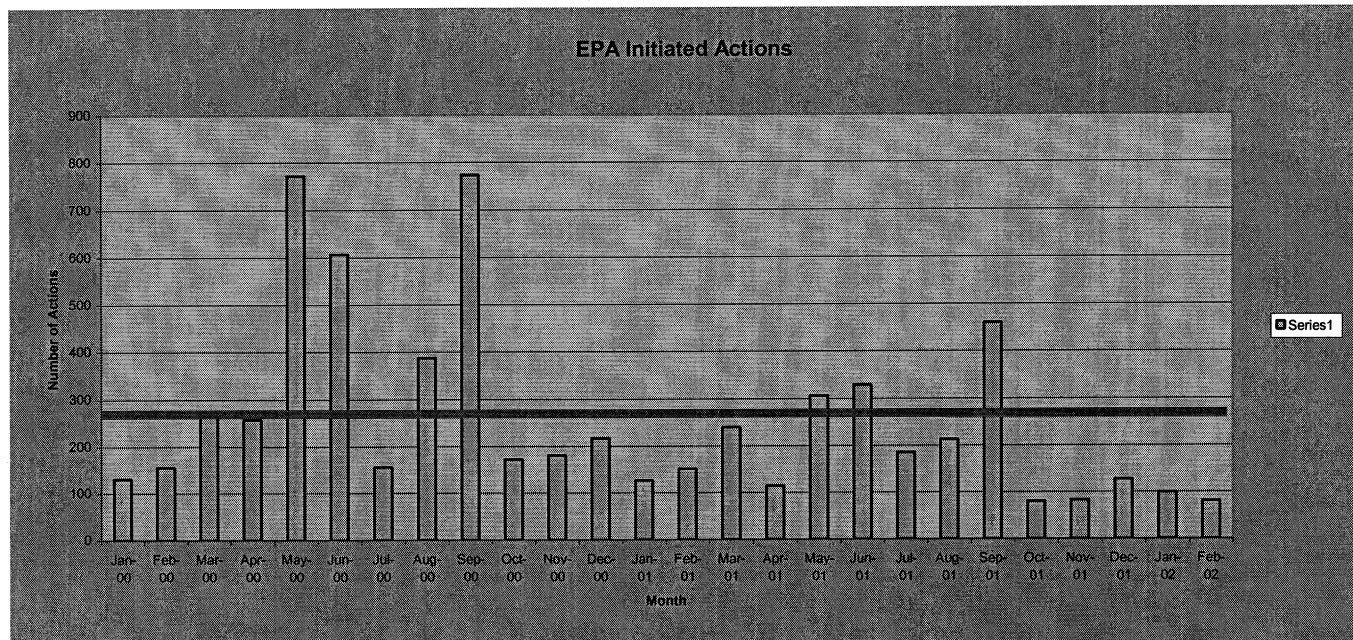
In order to compare the Bush Administration activities with the Clinton Administration activities, it was necessary to ensure that equivalent timeframes were used. The EPA database included activities initiated before March 7, 2002. Table 1 compares the numbers of EPA Administrative Actions taken between 12-4-99 – 1-19-01 (Clinton) and between 1-20-01 – 3-7-02 (Bush).

To ensure that these results were not misleading due to either a) the Bush Administration being understaffed in the early months of the Administration or b) the possibility that enforcement activities were somehow impeded by the events of September 11, a second timeframe was chosen for purposes of comparing the numbers of Administrative Actions initiated between 04-20-00 – 07-20-00 (Clinton) and those initiated between 04-20-01 – 07-20-01 (Bush). This interval was also chosen because it included the highest levels of Administrative Actions initiated for both 2000 and 2001. The analysis indicates that the Bush Administration initiated 40-50% fewer EPA Administrative Actions against polluting companies as were initiated by the Clinton Administration in both timeframes examined.

Timeframe	# Initiated Administrative Actions
12/4/99-1/19/01 (Clinton)	4370
1/20/01 – 3/7/02 (Bush)	2514
Bush vs Clinton	42.5% fewer
04/20/00 -07/20/00 (Clinton)	1559
04/20/01 – 07/20/01 (Bush)	794
Bush v. Clinton	49% fewer

**Table 1: Clinton v. Bush: Comparison of EPA Administrative Actions Initiated**

Figure 1 shows a plot of EPA Administrative Actions initiated each month from January 2000 to February 2002. The horizontal line indicates the average monthly number of actions initiated.



**Figure 1: EPA Administrative Actions Issued Each Month from January 2000 – February 2002**

## **B) The Clinton Administration Secured Significantly Higher Settlement Penalties and Remedies From Polluting Companies Than Did the Bush Administration**

When an EPA Administrative Action is initiated, there is often a proposed penalty listed for the violation. When the Action is settled, there is often a combination of financial penalty paid and environmental remedies (supplemental environmental project, or SEP, or physical and non-physical corrective actions) imposed. To compare final settlements reached by the Clinton Administration to those reached by the Bush Administration, two settlement metrics were developed.

The first settlement metric compares the average settlement cost of Actions initiated and settled during the Clinton Administration with those initiated and settled during the Bush Administration. The second settlement metric was obtained by dividing the average settlement cost by the proposed settlement cost, which gives an average final vs. proposed settlement cost ratio.

The timeframes compared Administrative Actions initiated and settled between 12-04-99 – 01-19-01 (Clinton) and Administrative Actions initiated and settled between 01-20-01 – 03-07-02 (Bush). In order to ensure that these results were not misleading due to either a) the Bush Administration being understaffed in the early months of the Administration or b) the possibility that EPA enforcement activities were somehow impeded by the events of September 11, a second timeframe was chosen for purposes of comparing the numbers of Actions initiated between 04-20-00 – 07-20-00 and settled prior to 09-11-00 (Clinton) and the number of Actions initiated between 04-20-01 – 07-20-01 and settled prior to 09-11-01 (Bush). This interval was also chosen because it included the highest levels of Administrative Actions initiated for 2000 and 2001<sup>2</sup>.

<sup>2</sup> Administrative Actions that were initiated outside the timeframe in question but settled during the timeframe were not included, and nor were actions that had no initiation date listed in the database but were settled during the timeframe in question.

Table 2 compares the settlements reached for Administrative Actions against polluting companies by the Clinton Administration with those reached by the Bush Administration. It is clear that:

**Timeframe 1: 12/4/99-1/19/01 (Clinton) compared to 1/20/01 – 3/7/02 (Bush)**

- The total cost of penalties and remedies recovered from environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration dropped by more than 80% as compared to that recovered by the Clinton Administration (\$165,066,975 vs \$845,142,719).
- The average settlement cost of environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration dropped by 62.9% as compared to that negotiated by the Clinton Administration (\$86,558.45 vs \$233,593.90).
- The ratio of the final settlement cost to the proposed penalty of environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration was 1.72, compared to 7.13 for the Clinton Administration.

**Timeframe 2: 04/20/00-07/20/00 (Clinton) compared to 04/20/01-07/20/01 (Bush)**

- The total cost of penalties and remedies recovered from environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration dropped by more than 80% as compared to that recovered by the Clinton Administration (\$52,583,122 vs \$288,935,051).
- The average settlement cost of environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration dropped by 62.1% as compared to that negotiated by the Clinton Administration (\$85,501.01 vs \$225,907.00).
- The ratio of the final settlement cost to the proposed penalty of environmental Administrative Actions initiated and settled against polluting companies by the Bush Administration was 3.15, compared to 5.81 for the Clinton Administration.

Date	# Initiated Administrative Actions	# Administrative Actions Settled in Specified Timeframe	#; average Proposed Administrative Penalty	#; average Final Administrative Penalty	#; average Supplemental Environmental Project Cost	#; average Physical Corrective Action Cost	#; average, Non-physical Corrective Action	Average Total Settlement Cost	Metric 2 – average total settlement cost divided by average proposed penalty
12/4/99-1/19/01	4370	3618	1561; \$32,768.19	1512; \$13,319.45	103; \$69,050.65	578; \$1,264,863.90	1260; \$68,888.98	\$233,593.90	7.13
1/20/01 – 3/7/02	2514	1907	1444; \$50,372.73	877; \$14,102.85	60; \$157,681.65	180; \$714,076.20	420; \$35,176.58	\$86,558.45	1.72
Bush vs Clinton	A drop of 42.5%	75.9% vs 82.8%						\$165,066,975 in costs recovered vs \$845,142,719 in costs, a drop of more than 80%	24.1% as high a ratio
04/20/00 - 07/20/00	1559	1279	179; \$38,877.92	174; \$9,666.43	13; \$25,239	251; \$1,108,782.36	844; \$10,214	\$225,907.00	5.81
04/20/01 – 07/20/01	794	615	314; \$27,137.94	213; \$10,714.84	2; \$5,500	40; \$1,036,118.30	102; \$76,901.79	\$85,501.01	3.15
Bush vs Clinton	A drop of 49%	77.4% vs 82%						\$52,583,122 in costs recovered vs \$288,935,051, a drop of more than 80%	54.2% as high a ratio

**Table 2: Clinton v. Bush: Costs of Settlements Reached for EPA Administrative Actions Against Polluting Companies**